

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of	:	
	:	
REQUEST FOR REVIEW BY	:	
	:	
REPRESENTATIVES OF THE	:	
CONSORTIO DE ESCUELAS	:	CC Docket No. 02-6
Y BIBLIOTECAS DE PUERTO RICO	:	
	:	CC Docket No. 96-45
Review of Denial of Funding by Schools	:	
and Libraries Division	:	
Funding Year 2001	:	

To the Commission:

**HITN REQUEST FOR REVIEW OF SLD FUNDING DENIAL TO CEBPR 2001
FUNDING APPLICATIONS AND SUPPORTING COMMENTS**

On behalf of the Hispanic Information and Telecommunications Network, Inc. (“HITN”), the undersigned counsel hereby submits this appeal to the Federal Communications Commission (“FCC”) to request immediate review of the Universal Service Administrative Company’s Schools and Libraries Division (“SLD”) denial of 2001 funding applications filed by numerous HITN school and library customers in Puerto that were formerly members of the Consortio de Escuelas Y Bibliotecas de Puerto Rico (“CEBPR”). The SLD has denied funding to CEBPR member applicants for funding year 2001 on two separate occasions over a five year period since the

applications were filed, including most recently in a June 26, 2006 Funding Commitment Decision Letter.

Standing

HITN has standing to intervene in this proceeding under 47 CFR §54.719, which allows for any person aggrieved by an action taken via delegated authority within the Universal Service program to appeal the action. As the service provider to the applicants' at issue in this appeal that has continued to provide service to many of these entities, notwithstanding SLD funding denials over the past five years , HITN has a direct interest in the outcome of this proceeding.

I. The use by CEBPR of Gloria Bermudez' name as a contact person on the Form 470 was harmless, and a ministerial mistake.

HITN fully supports the CEBPR's appeal filed August 25, 2006 with the Commission in this proceeding further appealing the second improper SLD denial of funding. The CEBPR made an understandable error in using an HITN employee as a contact on the Form 470. Ms. Bermudez was not involved in the CEBPR bidding process, and was mistakenly and harmlessly listed by CEBPR applicants as an alternate contact person. The applicants knew Ms. Bermudez was familiar with the E-Rate program, and familiar with the services the CEBPR had received in previous funding years.

The recently decided *Bishop Perry Order*¹ considered applications that were denied based on failure to comply with minimum processing standards, and gave some allowance for ministerial error, including mistakes in the contact information on Form 470's. In direct contrast to the *2002 Order*², the Commission stated, "the denial of funding requests inflicts undue hardship on the applicants. In these cases, we find that the applicants have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest."³

It is in the public interest to allow this ministerial error to be corrected, and funding issued for these schools and libraries without further delay.

II. Notwithstanding this harmless error, HITN was the only bidder to make a bid.

According to HITN records, HITN is not aware of any other service provider that submitted a bid for services to CEBPR applicants in Funding Year 2001. No complaints were lodged with the SLD concerning disappointed bidders or affected applicants. Any ministerial mistake made while completing the applications was

¹ *In the Matter of Request for Review of the Decision by the Universal Service Administrator by Bishop Perry Middle School New Orleans, LA, et al* CC Docket No. 02-6, Order, FCC 06-54 (2006) (Bishop Perry Order).

² *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico San Juan, Puerto Rico*, DA 02-1676, released July 15, 2002 (2002 Order), which stated that using a service providers' contact information on a Form 470 is a competitive bidding violation.

³ *In the Matter of Request for Review of the Decision by the Universal Service Administrator by Bishop Perry Middle School New Orleans, LA, et al* CC Docket No. 02-6, Order, FCC 06-54 (2006) (Bishop Perry Order) para 11.

harmless, since the SLD has made no showing that, by simply listing an HITN staff member as a contact person, any bidder was dissuaded.

It is HITN's recollection that in the early years of the program, the SLD itself encouraged service providers to help potential applicants understand the new E-Rate program. HITN did so by starting to spread word about the program in Puerto Rico before the first funding year even began. HITN continued using its scarce non-profit resources to continue educating the neediest schools and libraries in Puerto Rico about the availability of E-Rate funds and the program. HITN has stuck to its mission of providing services in Puerto Rico even through today, notwithstanding years of SLD funding denials for every reason under the sun, and millions of dollars of non-profit funding spent by HITN in Puerto Rico without reimbursement by SLD.

In denying the CEBPR applicants yet again on June 26, 2006 based on the newly alleged SLD claims of a competitive bidding violation, the SLD has presented no evidence that any waste, fraud, or abuse of the E-Rate program was either attempted or caused in fact due to this simple mistake. The services appealed were, in fact, provided by HITN, notwithstanding the financial hardship to HITN in providing desperately needed services to rural Puerto Rico. The SLD has once again succeeded in denying bona fide and deserving applications while making careless assumptions about worse case scenario (and non-existent in fact) competitive bidding violations, and not providing applicants a chance to correct or explain their mistakes.

III. The burden is on the SLD to determine a clear competitive bidding violation.

In conjunction with the *Bishop Perry Order*, the Commission in the *San Antonio Order* directed the SLD to go back and examine the applications for potential violations, stating, “[I]t is incumbent on USAC to conduct further investigation and analysis prior to denying funding...If an entity is able to demonstrate that it fully complied with all program rules and did not, for example, violate the Commission’s competitive bidding rules, then USAC should not deny funding.”⁴

The SLD cannot be allowed to operate in a vacuum of assumptions and presumptions. Absent clear evidence of violations, it is apparent the Commission instructed the SLD to ignore harmless mistakes, like the one the CEBPR applicants made, and process applications that will provide support to poor schools and libraries. The public interest is not served by SLD assuming every applicant is out to game the program and simply rejecting bona fide and qualified applications on a hunch. If the U.S. justice system was operated using the same underlying approach as the SLD has in this case, this nation would operate under a model of “guilty without the chance of ever proving innocence”. The SLD was directed to conclusively determine that service provider actions actually influenced an applicants’ choice before denying funding based on competitive bidding violations. No such evidence was ever provided in the instant case.

⁴ *In the Matter of Request for Review of the Decision by the Universal Service Administrator by Academy of Careers and Technologies, San Antonio, TX et al* CC Docket No. 02-6, Order, FCC 06-55 (2006) (San Antonio Order) para 7.

Conclusion

HITN is confident that the perceived competitive bidding violation was unintentional and ministerial, not the product of malicious intent or purposeful disregard for the rules against waste, fraud, and abuse. The inclusion of Ms. Bermudez in the contact information was an unintentional and understandable error, and similar to the types of errors the FCC forgave in its *Bishop Perry Order*. The FCC should conclude that the CEBPR Applicants' error in this case was harmless mistake, and direct the SLD to immediately grant their funding applications without further delay.

Respectfully submitted,

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August 25, 2006